In the High Court of Uttaranchal, at Nainital.

A.O. No. 457/2004

1- Smt. Vineta Devi W/o late Shiv Charan Mamgain

2- Shiv Charan Mamgain S/o Ghananand

3- Mukesh Chand S/o Shiv Charan

4- Km. Nirmala D/o Shiv Charan

All R/o Village Molthi, P.O. Molthi,
Via Pandul, Patti, Pandulsu
District Pauri Garhwal ---- Appellants.

Versus

1- National Insurance Company Ltd.
through Manager Branch Office,
Nazibabad Road, Kotdwar,
District Pauri Garhwal.

2- Charu Steel Limited Balbhadrapur Industrial
Area through its Managing Director
Kotdwar, District Pauri Garhwal ….. Respondents.

Sri B.P. Nautiyal and Sri H.M. Bhatia, Advocates for appellants.
Sri D.S. Patni, Advocate for the Insurance Co.

AND

A.O. No. 71/2005

National Insurance Company Ltd.

through Divisional Manager, Divisional Office,

Nainital Road, Haldwani

District Nainital ---- Appellant.

Versus

1- Smt. Vineta Devi W/o late Shiv Charan Mamgain

2- Shiv Charan Mamgain S/o Ghananand

3- Mukesh Chand S/o Shiv Charan

4- Km. Nirmala D/o Shiv Charan

All R/o Village Molthi, P.O. Molthi,

Via Pandul, Patti, Pandulsu

District Pauri Garhwal

5- Charu Steel Limited Balbhadrapur Industrial

Area through its Managing Director

Owner of Vehicle No. U.P. 06-2543,

Kotdwar, District Pauri Garhwal ….. Respondents.

Sri B.P. Nautiyal and Sri H.M. Bhatia, Advocates for respondent/claimants.
Sri D.S. Patni, Advocate for the appellant/ Insurance Co.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 19-5-2006

Both these appeals, filed under Section 173 of the Motor Vehicles Act, 1988, arise out of the same judgment and award, dated 23-9-2004 passed by M.A.C.T./District Judge, Pauri Garhwal in MACP No. 12/2001 Smt. Vineta and others Vs. National Insurance Company and another, awarding Rs. 1,72,267/- as compensation to the claimants along with 9% interest per annum payable by the Insurance Company, therefore, they are decided by one order.

2- Brief facts of the case giving rise to these appeals are that Ganesh Chandra Mamgain was employed as conductor in Truck No. U.P. 06-2543. On 7.3.2000 Ganesh Chandra Mamgain along with the driver of the truck carried iron-rods in the said truck from M/s Sidhbali Steel Kandi Road Kotdwar to M/s Hindustan Iron Delhi and stated journey at about 9 P.M. When the offending truck did not reach Delhi, search was made and the owner of the truck lodged first information report at P.S. Kotdwar. During investigation dead bodies of driver Dildar Hussain and conductor Ganesh Chandra Mamgain were recovered from the wheat field of Ram Sharan situated in village Ahmad Garh near Khatoli road. The police took into possession the dead bodies and post mortem was conducted. Photos of dead bodies were published in the Newspaper. It was published in the Newspaper that some unknown criminals have committed the murder of the driver and conductor with intention to rob the truck and thereafter the family members of the deceased persons identified them. The claimants are the parents, brother and sister of the deceased. They have alleged in the claim petition that the deceased at the time of accident was 22 years of age and was earning Rs. 4,500/- per month from the job of conductor. Hence they filed the claim petition for Rs. 8,20,000/- as compensation.

3- The insurer of the offending truck, National Insurance

Company contested the claim petition by filing written statement stating therein that the claim petition was filed on wrong facts. It was alleged that the deceased was not employed conductor on the offending truck. The dead body of the deceased was recovered from a wheat field in village Ahmad Garh P.S. Jansad District Muzaffarnagar and has no relevance with the alleged accident of the truck. The deceased was murdered for which the Insurance Company is not liable to pay any compensation. It was also pleaded that at the time of accident the offending truck was not being plied in accordance with the conditions of the insurance policy, as the driver was not having valid driving lincence and the truck had no registration certificate and permit etc.

4- The owner of the offending truck also filed his written statement. He alleged that the deceased was murdered by the dacoits with intention to loot the goods loaded in the truck. It was also pleaded that the accident did not occur due to rash and negligence of its driver. The owner of the truck also asserted that the deceased was getting Rs. 1,900/- per month as salary. The offending truck was insured with National Insurance company for the period 2.1.2000 to 1.1.2001. Hence the insurance company is liable for payment of compensation.

5- The Tribunal on the pleadings of parties framed the following issues for determination:-

(1)- Whether deceased Ganesh Chand Mamgain died in an accident as alleged in the claim petition?.

(2)- Whether the driver of the offending vehicle bearing No. U.P.06-2543 was holding valid driving licence at the time of alleged accident?.

(3)- Whether the claim petition is not maintainable, as alleged in the written statement?.

(4)- Whether the petitioners are entitled to get any compensation if so what amount and from whom?.

6- The claimants produced Shiv Charan Maimgain as P.W.1 and Smt. Bineta Devi as P.W.2 and also filed some documents in support of their claim. The owner of the offending truck filed copies of driving licence, permit, fitness etc.

7- The Tribunal on hearing learned counsel for the parties and perusing the evidence on record held that the driver of the offending truck was having valid driving licence at the time of accident. The Tribunal also held that the deceased was murdered by unknown miscreants the intention of which was to loot the offending truck hence the incident is covered within the accident under Motor Vehicles Act and heirs of the deceased are entitled for compensation and in this way awarded Rs. 1,72,267/- as compensation to the claimants along with 9% interest per annum payable by the Insurance Company.

8- Feeling aggrieved the National Insurance Company has filed the A.O.No.71/2005 whereas the claimants also filed A.O. No. 457/2004 for enhancement of compensation.

9- Heard learned counsel for the parties and perused the record.

10- First of all we take up appeal filed on behalf of the Insurance Company. The learned counsel for the appellant has attacked the impugned judgment and award passed by the Tribunal on the ground that the death of the deceased Ganesh Chandra Mamgain did not occur on account of use of motor vehicle as such it is not covered by insurance policy and no liability of compensation can be fixed upon the insurer of the vehicle.

11- Perusal of the record of the case reveal that the death of Ganesh Chandra Mamgain had occurred on account of an accident arising out of the use of motor vehicle. It is not disputed that the vehicle in question was insured with National Insurance Company at the time of the accident. It is also not disputed that the dead body of the deceased Ganesh Chandra Mamgain was recovered from a field in Ahmadnagar. The evidence on record reveal that the truck in question was loaded with iron rods and was transporting the same at the time of the accident. It started from Kotdwar on 7-3-2000 for its destination at Delhi. When the truck did not reach to Delhi its owner started making investigation and he came to know that the dead body of the deceased Ganesh Chandra Mamgain who was conductor of the truck was recovered on 8-3-2000 in village Ahmadnagar and a report to this effect was lodged by the Gram Pradhan at concerned police station on 8-3-2000.

12- The provision of section 163-A of the Motor Vehicles Act runs as follow:-

> ***[163 A. Special provisions as to payment of compensation on structured formula basis-*** *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be,*
>
> *Explanation- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).*
>
> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*
>
> *(3) The Central Government may, keeping in view the cost of living by notification in the official Gazette, from time to time amend the Second Schedule."*

13- From perusal of the aforesaid provision it is quite clear that in case if the death or permanent disablement is caused due to accident arising out of use of motor vehicle then the insurer shall be liable to pay the compensation. Our view is fortified by the decision of Hon'ble Apex Court in the case of **Rita Devi and others versus New India Assurance Company Ltd and another** reported in **A.I.R. 2000 Supreme Court page 1930.** It has been held by the Apex Court that in case if the death has taken place on account of an accident rising out of the use of motor vehicle then it is the liability of the insurer of the vehicle to pay the amount of compensation. The Hon'ble Apex Court has also held in the aforesaid case that the perusal of the objects of two enactments, i.e., Workmen Compensation Act as well as Motor Vehicles Act, clearly establish

the both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word "death" in Workmen's Compensation Act is also applicable to the interpretation of the word "death" in Motor Vehicles Act.

14- We, therefore, do not find any infirmity in the impugned judgment and award passed by the Tribunal. The Tribunal has rightly held that it is the liability of the insurer of the vehicle, i.e., National Insurance Company to pay the amount of compensation awarded in favour of the claimants.

15- Accordingly we do not find any force in this appeal. The appeal lacks merits and is liable to be dismissed.

16- So far as the appeal filed on behalf of the claimants is concerned, learned counsel for the appellants/claimants has argued that the Tribunal has completely ignored the aspect in respect of non-pecuniary losses sustained to the claimants and has committed a gross illegality in deducting 1/3rd amount against personal expenditure of the deceased twice on the ground that the amount is being paid in lump sum. Therefore, the submission of the learned for the claimants is that keeping in view the age of the deceased and the aspect of his future prospects the amount awarded in favour of the claimants should be enhanced.

17- As far as this submission of the learned counsel for the claimants is concerned that the amount 1/3rd has been deducted twice by the Tribunal in calculating the total amount of compensation is perverse, we find force in this contention.

18- The Tribunal has once reduced the 1/3rd amount against the personal income of the deceased which he could have incurred in maintaining himself had he been alive and after applying the multiplier of 17 again reducing 1/3rd amount in the same head appears to be apparently illegal.

19- Keeping in view the evidence on the record the annual income of the deceased has been assessed as Rs. 22,800/-. The age of the deceased at the time of his death was 22 years and after adopting the multiplier of 17 this amount comes to Rs. 3,87,600/-. In case if in this amount, a deduction of 1/3rd against the personal expenditure of the deceased is made, then the same comes to Rs. 2,58,400/- (rounded

to Rs. 2,58,000/-). Therefore, we hold that the claimants are entitled to get a compensation to the tune of Rs. 2,58,000/- along with an interest of 9% per annum as has been directed by the Tribunal.

20- In view of above, the appeal filed by the claimants is liable to be allowed partly.

21- Accordingly the A.O. No. 457/2004 Smt. Vineta Devi and others Vs. National Insurance Company and others is partly allowed and the impugned award dated 23-9-2004 passed by M.A.C.T./District Judge, Pauri Garhwal in MACP No. 12/2001 is modified to the extent that the claimants shall be paid an amount of Rs. 2,58,000/- as compensation instead of Rs. 1,72,267/-, along with an interest @ 9% per annum as held by the Tribunal.

22- However, the A.O. No. 71/2005, filed by National Insurance Company, is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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